

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
ARLINGTON COUNTY, VIRGINIA
AND
THE CITY OF ALEXANDRIA, VIRGINIA
FOR OPEN CHANNEL DREDGING OF THE
FOUR MILE RUN EAST AND WEST LEVEE SYSTEM**

25th This Intergovernmental Agreement (the "Agreement"), is entered into this day of March, 2021, by and between the Arlington County Board of Arlington County, Virginia ("Arlington") and the City Council of Alexandria, Virginia ("Alexandria"), both political subdivisions of the Commonwealth of Virginia, who may be referred to individually as a "Party" and together are referred to as the "Parties."

RECITALS

WHEREAS, the Four Mile Run East and West Levee System ("System") is a US Army Corps of Engineers (USACE) federally authorized and constructed flood risk management project that was first authorized in 1970, modified in 1971, and reauthorized in 1974. The project was constructed between 1974 and 1984 and straddles the boundary of both Arlington County and the City of Alexandria from the north and the south, as shown in Exhibit A; and

WHEREAS, the Four Mile Run East and West Levee System runs in a southeasterly direction from Interstate 395 to its confluence with the Potomac River and protects residents, travelers, and businesses of both Arlington and Alexandria from flooding; and

WHEREAS, the Four Mile Run East and West Levee System is considered a locally and jointly operated and maintained levee system with Arlington County and the City of Alexandria through a project cooperation agreement between the sponsors (Arlington County and the City of Alexandria) and the USACE; and

WHEREAS, in an agreement entered on, and dated 26 March 1974 and 8 April 1974, respectively, Arlington County and the City of Alexandria have a shared responsibility for maintenance of the System to include the open channel of Four Mile Run - the north side being Arlington County's responsibility and the south side being the City of Alexandria's responsibility; and

WHEREAS, the shared maintenance of the open channel of Four Mile Run includes clearing of debris, vegetation growth, and shoaling as required by the USACE annual inspection program; and

WHEREAS, there has been a history of 50/50 cost sharing, without written agreement, between the Parties for maintenance of the Four Mile Run Levee System, and records indicate that there has been cost sharing in the past and agreements in place for recreational facilities associated with the Four Mile Run trail with Arlington and Alexandria each contributing 50% of the cost; and

WHEREAS, there has been excessive shoaling found in the flood channel as indicated in the most recent USACE system inspection report, with a rating of unacceptable; and

WHEREAS, the Four Mile Run East and West Levee System is in need of open channel dredging (the "Project") in order to bring the System into compliance with the USACE; and

WHEREAS, the Parties desire to jointly to complete the Project; and

NOW, THEREFORE, in consideration of the foregoing premises, the Parties agree as follows:

ARTICLE I – OPEN CHANNEL DREDGING PROJECT

- A. Routine Maintenance for Open Channels is defined as those items listed in the document entitled "Operation and Maintenance Manual, Four Mile Run Local Flood Control Project, Alexandria and Arlington Virginia, Potomac River Basin" dated September 1981, found on page 9-1, and includes clearing and dredging to remove vegetation or other encroachments.
- B. The Basis of design: RKK construction documents for Four Mile Run Sediment Removal Dated: 03/15/2021. RKK is under contract with Arlington for the design of the Project.
- C. Alexandria has obtained regulatory permits for the channel maintenance (VMRC#2016-1420 Expiration January 24th, 2022 / USACE#NAO-2007-2373/07-V0235 -Valid prior to March 18, 2022 at such time as the USACE NWP's will be re-issued). Alexandria hereby grants permission to Arlington to utilize the existing permits for the work described herein. Arlington County was also added to the new permit for the administrative clarity. The Parties mutually agree to effectively act as joint-applicants for the scope of work described herein conducted under the regulatory approval of the permits issued to Alexandria and will share mutual responsibility for compliance with all terms and conditions of the permits.
- D. The Parties mutually agree to develop and implement a Project Management Plan, prior to advertisement and award of any construction contract for the Project, which shall at minimum include:
 - a. Project Description
 - b. Scope of Work
 - c. Project budget
 - d. Milestone and Gantt Schedules from procurement through completion
 - e. Safety Management Plan
 - f. Reference to project / contract documents
 - g. Register of all applicable regulatory Permits
 - h. Project stakeholders

- i. Key staff
 - ii. Roles and Responsibilities of the Project Team (Key staff and stakeholders for each jurisdiction):
 - 1. Purchasing Representative
 - 2. Project Manager
 - iii. Authority of Team Members (review and approval authority)
 - 1. Invoices
 - 2. Proposed Change Orders
- ii. Document management protocols
- iii. Communications protocols
 - 1. Signage/Notices
 - 2. Community Updates
 - 3. Daily Reports
 - 4. Monthly Reports
 - 5. Request for Information (RFIs)
 - 6. Invoices
 - 7. Change Orders

ARTICLE II – RESPONSIBILITIES

- A. Arlington's Responsibilities:
 - a. Serve as lead, procuring and administering jurisdiction. Procurement shall comply with federal procurement requirements and guidelines due to potential for federal reimbursement.
 - b. Provide and otherwise maintain any supplementary regulatory permit coverage required for work associated with non-joint elements of the Project not otherwise covered by the existing USACE National Wide Permit (NWP) and Virginia Marine Commission (VMRC) permits.
 - c. Ensure the RKK scope and fee provides for comprehensive daily inspections and that Construction Management and Inspection (CM&I) contract includes provision of delegated authority and sufficient scope and fee to perform Storm Water Pollution Prevention Plan (SWPPP) inspections for the duration of construction activity.
 - d. Provide documentation to demonstrate funding is available and encumbered to support the agreed upon allocation of costs in the Cost Share section herein.
 - e. Coordinate with RKK to incorporate the additional repairs/scope requested by the City of Alexandria (gabion baskets)
 - f. Furnish and provide a mutually accessible file sharing resource (SharePoint or comparable) to centrally locate and host all project data (plans, invoices, RFIs, contract documents, change orders, proposed change orders, inspector daily reports, etc.)
 - g. Designate a Purchasing Representative and a Project Manager who will have authority to review and request contract modifications by the Contracting Officer.
 - h. Designate a Project Manager who will serve as the primary point of contact to Alexandria during Project construction.
 - i. Project Manager shall regularly communicate with the Alexandria's project manager

and share updates on progress, forthcoming proposed change orders, and any potential changes in scope or schedule, etc.

j. Notification to Arlington residents of construction activity in advance of construction.

k. Provide and share all design development, construction, and contract documents associated with this project with Alexandria.

l. Ensure following contractor and consultant responsibilities,

i. Contractor's Responsibilities:

1. Contractor shall provide and pay for all labor, materials, equipment, tools, transportation, and other services or facilities necessary for the proper and safe execution and completion of the project.
2. Contractor shall supervise work and be solely responsible for all construction means, methods, sequences, and procedures and for coordinating all portions of the work under this MOU.
3. Contractor shall develop and submit -Maintenance of Traffic (MOT) plan, including all proposed hauling routes, for review and mutual approval by Alexandria and Arlington.
4. Contractor shall be responsible for all actions and/or omissions of their employees and/or subcontractors.
5. Contractor shall submit complete and accurate partial payment invoicing on monthly basis by the 10th business day of the next month.
6. Maintain bonds and insurance as required per the contract documents.
7. Comply with all safety requirements and best practices.
8. Compliance with Equal opportunity/Small Biz/SWAM requirements.
9. Indemnification, per the contract documents
10. Compliance with Law, Codes and Ordinances, and Regulatory Permits
11. Complete work within the Period of Performance
12. Ensure permeable pavers and the stormwater BMPs are effectively protected from damage and sediment at Four Mile Run parking lot. At the sole discretion of the City of Alexandria, Contractor shall make repairs at no additional cost to the City of Alexandria or Arlington.
13. Obtain and comply with requirements of all construction-related permits (hauling, ROW, etc.) as required to execute and complete the project.
14. Contractor's Constraints
 - a. Limit work to designated areas and limits of disturbance, as per the contract documents.
 - b. Working days and hours shall be in accordance with the City of Alexandria's and Arlington's
 - c. Observe and comply with all weight restrictions associated with bridges and haul routes.

ii. RKK's Responsibilities:

1. Design – prepare plans, specs, and construction cost estimate. Prepare SWPPP.
2. Construction Phase Services –
 - a. Daily presence and inspection for duration of contract/field work.

- b. Consistently prepare and submit Inspector Daily Reports (IDRs) to document working conditions, contractor resources on site, work performed, weather delays, material hauling tickets, etc. for use in invoice review.
- c. Record keeping for us in quantity verification
- d. Perform Erosion and Sediment (E&S) control and SWPPP inspections, as required by permit. Verification any inspection documents from Contractor and maintain records for E&S and SWPPP compliance. (Contractor completes inspections via delegation of authority and provides documentation to RKK). RKK is not conducting inspections on behalf of Contractor.
- e. Review of invoice completed and a written recommendation for approval or revision of invoices based on IDRs provided within 5 days of receipt by RKK.

B. City of Alexandria's Responsibilities:

- a. Serves as a partner and stakeholder for the Project.
- b. Provide and otherwise maintain regulatory permit coverage for the joint elements of the Project via the existing USACE Nationwide Permit and VMRC dredging permit. (excludes Long Branch)
- c. Submit application and obtain Virginia Department of Environmental Quality (VDEQ) Construction General Permit; However, such application or permit may require Arlington's signature on application as Permittee.
- d. Provide soil characterization report via an existing, on-call contract.
- e. Provide documentation to demonstrate funding is available and encumbered to support the agreed upon allocation of costs in the Cost Share section herein.
- f. Designate a Contracting Officer, a Contracting Officer's Representative (COR), and a Contracting Officer's Technical Representative (COTR) who will have authority to review and request contract modifications by the Contracting Officer.
- g. Designate a Project Manager who will serve as the primary point of contact to Arlington during construction. (may be the same as the COTR)
- h. Notification to Alexandria residents of construction activity in advance of construction.

ARTICLE III – COST SHARING

- A. The Parties agree that funding requirements for cost sharing for the Project - is as follows:**

Total Project Budget is: \$4,722,719.04

Based on RKK's cost estimated dated: 01/07/2021

C/O Budget is 10% of estimated construction costs.

And includes the full cost of Design, CMI/Inspection, and Construction

Project Elements	Budget	Cost Share (%)		Cost Share (\$) Per Jurisdiction	
		Alexandria	Arlington	Alexandria	Arlington
Four Mile Run - Dredging	\$3,626,257.87	50%	50%	\$1,813,128.93	\$1,813,128.93
Long Branch-Improvement	\$434,512.83	0%	100%		\$434,512.83
Gabion Baskets – City of Alexandria	\$59,512.50	100%	0%	\$59,512.00	
Design, Specification, and Permit Fee (RKK)	\$86,486.94	50%	50%	\$43,243.47	\$43,243.47
Construction Management and Inspection (RKK)	\$103,920.58	50%	50%	\$51,960.29	\$51,960.29
Construction Contingency-Long Branch Improvement	\$43,451.28				\$43,451.28
Construction Contingency-Four Mile Run	\$368,577.04			\$187,264.14	\$181,312.89
TOTALS	4,722,719.04			\$2,155,109.34	\$2,567,609.70

- B. Upon receipt of construction bids in response to the solicitation for the Project, Arlington will advise Alexandria of the bid results.
- C. In the event that the responsive and responsible low bid for construction received in response to a solicitation causes the overall budget to exceed the agreed upon budget, the Parties shall have the option to approve additional funding or mutually agree to a reduction in contract scope.
- D. Arlington shall provide the Invitation to Bid and all related contract documents to Alexandria for mutual review and approval of the Alexandria's Contracting Officer and COR prior to bid advertisement.
- E. Any and all proposed changes orders to the construction contract, the design contract, and/or construction administration/inspection services contract, shall be provided for mutual review and approval of the Arlington and Alexandria prior to approving any contract modifications.

- F. If any change order to any design or construction contract causes the construction contract to exceed the approved construction budget Arlington will advise the Alexandria before proceeding to execute such change order.

ARTICLE IV – INVOICING AND PAYMENT

- A. Upon receipt and approval by the CMI (RKK), -Arlington will transmit the construction contractor's invoice and identify the Alexandria's cost share responsibility for its share of the project costs on a monthly basis.
- B. Alexandria shall review and provide any comments, required revisions, or approval to Arlington within 10 business days of receipt.
- C. Invoices shall contain an itemized accounting and description of costs incurred and correspond with the contract bid form and approved invoice form.
- D. Alexandria's share of each monthly invoice shall be paid to Arlington within 30 days of approval (NET 30).
- E. As of the date of this Agreement, Arlington has paid for, begun the design of the dredging Project, and has incurred costs. At the conclusion of design, Arlington will invoice Alexandria for its share of the design costs per the cost share allocation herein.
- F. Arlington will review the RKK invoices for Construction Management and Inspection Services (CMI) during the course of the Project. Upon approval, Arlington shall invoice the City of Alexandria for its share of CMI progress invoices for work completed during the construction phase per the cost share allocation herein.
- G. Either Party shall make available to the other invoices, canceled checks, and such other documents as the Party may reasonably require in order to verify the total costs of the Project.
- H. Five percent (5%) Retainage shall be withheld from partial payments until the construction contractor has achieved Final Completion and has submitted all required closeout documents as determined by mutual agreement and consensus of the Parties.
- I. Right to withhold payment: Either jurisdiction may withhold payment only to such extent as may be necessary to protect the jurisdiction(s) due to loss because of:
- a. Incomplete work;
 - b. Defective work not remedied after written notice to the construction contractor to cure within 15 calendar days after receipt of such notice;

- c. Third party claims filed against the jurisdiction(s), or receipt of notice of such claims. Contractor and both jurisdictions shall be immediately notified in writing of any such claims.
- d. Failure of the construction contractor to make undisputed payments to subcontractors for labor, materials, and/or equipment.
- e. Property damage resulting from the actions or omissions of the construction contractor or their Subcontractors
- f. Liability, damage, or loss due to injury to persons, property, or damages to the work or property of others, but only to the extent caused by the negligence of the Contractor or their subcontractors.

ARTICLE V – DISPUTE RESOLUTION

The Parties agree to informally pursue resolution of any dispute arising out of this Agreement. Arlington County's Department of Environmental Services Director and City of Alexandria Transportation and Environmental Services Director, or their designees (the "Directors"), shall meet as necessary to coordinate and resolve any disputes concerning their respective staff's implementation of this Agreement. Any dispute that cannot be resolved by the Directors shall be presented in writing to the second level reviewers, who shall be the Deputy County Manager for Arlington and the Deputy City Manager for Alexandria. If the dispute cannot be resolved by the second level of review, then the matter shall be presented to the Arlington County Manager for Arlington County and the City Manager of the City of Alexandria.

ARTICLE VI – NOTICES

Unless otherwise provided in writing, all notices and other communications required by this Agreement are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

If to the County of Arlington, as follows:

Greg Emanuel
Director, Department of Environmental Services
2100 Clarendon Blvd., Suite 900
Arlington, VA 22201

And simultaneously copied by electronic mail to:

Elizabeth Thurber, Stormwater Infrastructure Program Manager
Office of Sustainability and Environmental Manager
EThurber@arlingtonva.us

If to the City of Alexandria, as follows:

Yon Lambert
Director, Department of Transportation & Environmental Services
301 King Street, Room 4100
Alexandria VA 22314

And simultaneously copied by electronic mail to:

Matthew Landes, Division Chief
Department of Project Implementation
matthew.landes@alexandriava.gov

ARTICLE VII – APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation shall be in the Circuit Court for Arlington County, Virginia.

ARTICLE VIII – DURATION OF AGREEMENT

This Agreement is effective upon execution by both Parties and shall continue in full force and effect until the Project is completed and all payments have been made.

ARTICLE IX – NO WAIVER OF SOVEREIGN IMMUNITY

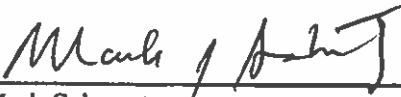
Nothing in any of the provisions of this Agreement to the contrary, nothing in this Agreement, nor any action taken by either of the Parties, or any of the Parties' elected or appointed officials, officers or employees, pursuant to this Agreement, nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of such persons and entities.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year shown below.

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

Date: 3.25.21

By: 
Mark Schwartz
County Manager

Approved as to Form: Julie A Massie
Asst. County Attorney

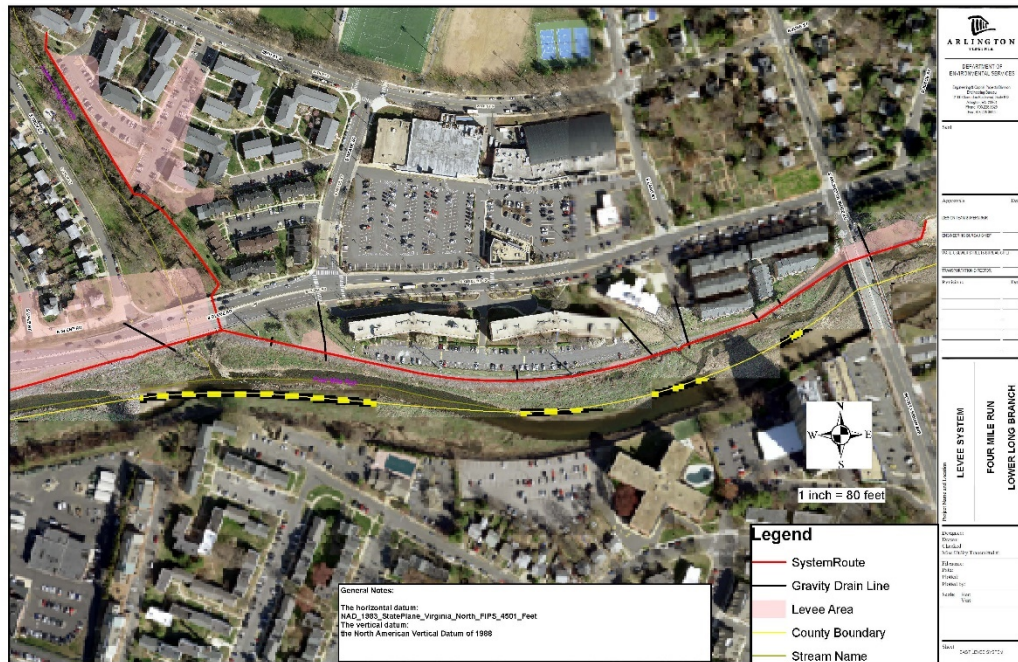
CITY COUNCIL OF ALEXANDRIA, VIRGINIA

Date: 3-15-21

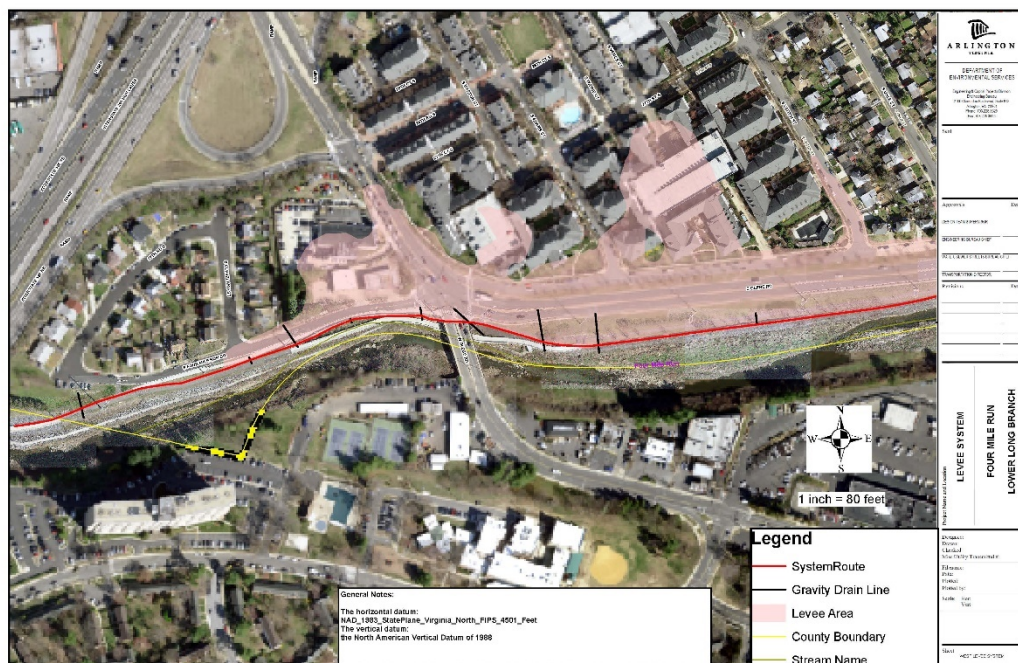
By: 
Mark B. Jinks
City Manager


Adrienne Fine, Assistant City Attorney, Approved as to form (Mar 10, 2021 11:55 EST)

EXHIBIT A



East Levee System



West Levee System